SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 20232

ANGELA BORELLI, ADMINISTRATRIX OF THE ESTATE OF BRANDON GIORDANO

V.

OFFICER ANTHONY RENALDI, OFFICER MICHAEL JASMIN, SERGEANT WILLIAM KING AND TOWN OF SEYMOUR

BRIEF OF THE DEFENDANTS-APPELLEES, OFFICER ANTHONY RENALDI, OFFICER MICHAEL JASMIN, AND TOWN OF SEYMOUR

FOR THE DEFENDANTS-APPELLEES:
OFFICER ANTHONY RENALDI,
OFFICER MICHAEL JASMIN,
AND TOWN OF SEYMOUR

TO BE ARGUED BY:

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II. Whether the trial court correctly determined, based upon the allegations of the Plaintiff's Complaint, that the acts and omissions complained of with respect to Renaldi and Jasmin inherently involve discretionary acts/duties;

III. Whether the trial court correctly determined, based upon the allegations of the Plaintiff's Complaint and evidence, that the Plaintiff's decedent was not a member of a foreseeable class of victims;

IV. Whether the trial court correctly determined that there is no evidence to support that the Plaintiff's decedent was an identifiable person subject to imminent harm;

V. Whether the trial court's decision may be affirmed on the alternative basis that the Plaintiff's decedent was not subject to imminent harm as a matter of law;

VI. Whether the trial court's decision may be affirmed on the alternative basis that the Plaintiff failed to sustain her burden of proof to establish that it was apparent to any individual Defendant that her decedent was at risk of imminent harm;

VII. Whether the trial court's decision may be affirmed on the alternative basis that no individual Defendant's conduct was the cause in fact or proximate cause of the Plaintiff's decedent's death and, thus, the Plaintiff's negligence claims fail as a matter of law; and

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COUNTER STATEMENT OF THE FACTS AND NATURE OF THE PROCEEDINGS

On the evening of Friday, March 9, 2012, as Eric Ramirez proceeded on Route 67 in Seymour, with Dion Major and Brandon Giordano as passengers in his vehicle, Major was riding as a passenger in the front seat and Giordano was sleeping in the back of the vehicle. (Dion Major Depo. Trans., July 14, 2015, T54:13-18, Pl.'s App. at A80.) As Ramirez drove along Route 67, he had "his underglow" (LED lights) on and was probably speeding. (Dion Major Depo. Trans., July 14, 2015, T35:23-36:7, T67:14-21, Pl.'s App. at A76-77; Dion Major Statement, dated March 10, 2012, Pl.'s App. at A98.) Ramirez, who ignored Major's pleas for him to slow down, was not in his right mind that night, later telling Major that he saw "a chandelier" or the "devil's star". (Dion Major Depo. Trans., July 14, 2015, T9:13-11:16, T11:24-12:14, T75:17-24, Pl.'s App. at A72-75, A96.)

Defendant-Appellee, Officer Anthony Renaldi, was patrolling Route 67 near West Street when he observed the Ramirez vehicle with its illuminated underglow lights. (Anthony Renaldi Depo. Trans., May 12, 2015, T57:17-58:13, T64:7-15, Pl.'s App. at A111-13.) Renaldi did not observe whether there were any occupants of the vehicle other than the driver. (Anthony Renaldi Depo. Trans., May 12, 2015, T102:6-15, Pl.'s App. at A144.) Renaldi decided to stop the vehicle as such lights displayed on the front of a vehicle are a violation of Connecticut Motor Vehicle law. (Anthony Renaldi Depo. Trans., May 12, 2015, T65:25-66:9, Pl.'s App. at A114-15.) Once Renaldi was headed in the same direction as the Ramirez vehicle, Ramirez accelerated in response. (Dion Major Depo. Trans., July 14, 2015, T61:20-63:8, Pl.'s App. at A86-88; Anthony Renaldi Depo. Trans., May 12, 2015, T70:8-21, Pl.'s App. at A118.) Renaldi tried to close the distance between the two vehicles, also accelerating his police cruiser, but did not turn on his lights and sirens as he wanted to

get the vehicle's license plate number before stopping it. (Anthony Renaldi Depo. Trans., May 12, 2015, T71:19-72:17, Pl.'s App. at A119-20.) Ramirez continued to speed, illegally passing cars in a no-passing zone. (Dion Major Depo. Trans., July 14, 2015, T61:20-63:8, T69:1-9, Pl.'s App. at A86-88, A91; Dion Major Statement, dated March 10, 2012, Pl.'s App. at A98; Anthony Renaldi Depo. Trans., May 12, 2015, T56:1-23, T73:8-13, Pl.'s App. at A110, A121.) At this point, Renaldi was operating his cruiser at a speed of fifty to sixty miles per hour but was not catching up to the Ramirez vehicle. (Anthony Renaldi Depo. Trans., May 12, 2015, T72:18-20, Pl.'s App. at A120.) Instead, the distance between the two vehicles was increasing. (Anthony Renaldi Depo. Trans., May 12, 2015, T72:21-73:1, Pl.'s App. at A120-21.) Upon observing the Ramirez vehicle pass vehicles illegally, at a high rate of speed, Renaldi activated his lights and sirens with an intent to stop a reckless driver. (Anthony Renaldi Depo. Trans., May 12, 2015, T73:24-74:13, T75:8-14, Pl.'s App. at A121-23.)

A few seconds after activating his lights and sirens, Renaldi radioed dispatch and advised that he had commenced pursuit of the Ramirez vehicle. (Anthony Renaldi Depo. Trans., May 12, 2015, T73:24-74:13, T75:8-14, Pl.'s App. at A121-23.) Renaldi was only pursuing the Ramirez vehicle for a couple of seconds before he entered the Town of Oxford. (Anthony Renaldi Depo. Trans., May 12, 2015, T73:24-74:13, T75:8-14, Pl.'s App. at A121-23.) Ramirez then "blacked out" or turned off all exterior lights of his vehicle and Renaldi terminated his pursuit. (Dion Major Depo. Trans., July 14, 2015, T9:5-15, T69:17-70:9, T71:25-73:10, Pl.'s App. at A72, A91-93; Anthony Renaldi Depo. Trans., May 12, 2015, T73:24-74:13, T75:8-14, Pl.'s App. at A121-23.) Ramirez, however, continued to travel at a high rate of speed with the vehicle's lights off, turning from Route 67 to Old State

Road, sliding on dirt and sand at the intersection as he did so. (Ryan Pfeiffer Depo. Trans., July 31, 2015, T32:24-34:8, Pl.'s App. at A160-62.) Ramirez, ultimately, crashed the vehicle two-tenths of a mile down the road. (Anthony Renaldi Depo. Trans., May 12, 2015, T35:23-36:1, Pl.'s App. at A108-09.)

Defendant-Appellant, Officer Michael Jasmin, did not engage in any pursuit of the Ramirez vehicle. (Affidavit of Michael Jasmin and Police Case Incident Report attached as Exhibit 1, Pl.'s App. at A168-70.) While on routine parole on Mountain Road, approximately a quarter mile before Route 67, he heard Officer Renaldi relay over the police radio that he was attempting to catch up with a vehicle, on Route 67, heading into Oxford. (Id. at A170.) Jasmin traveled from Mountain Road to Route 67 to assist Renaldi. (Id.) Once Jasmin was on Route 67, Renaldi relayed he was on Old State Road and Jasmin continued to Renaldi's location. (Id.) Jasmin never had contact or eyesight on the Ramirez vehicle or Renaldi's cruiser, having first observed the Ramirez vehicle at the site of the accident. (Id.)

The Defendants specifically take issue with Plaintiff's representations to this Court that Officer Renaldi pursued the Ramirez vehicle due to its underglow lights, Renaldi did not cease the pursuit, and Officer Jasmin joined the pursuit. (Pl.'s Br. at 1, 5, 6.) Plaintiff's representations in this regard, as demonstrated above, are simply inaccurate. The Defendants also disagree with the Plaintiff's contention that the trial court concluded, based upon witness Steven Landi's statement, that Jasmin joined the pursuit. The trial court, based upon Jasmin's affidavit and Landi's statement, concluded that it was undisputed that Jasmin was the *third* patrol car observed by Landi turning from Mountain Road onto Route

67, and not the *second* patrol car as claimed by the Plaintiff.[1] (Memo. of Dec. at 4, Pl.'s App. at A285.) Lastly, Landi did not state that he observed any officer "fly" by him as represented by the plaintiff. (Pl.'s Br. at 15.) The only vehicle Landi described as "flying" was the Ramirez vehicle. (Steven Landi Written Statement, dated March 3, 2011, Pl.'s App. at A226-27.) Landi observed one patrol car seventy-five yards, or .042 miles, behind the Ramirez vehicle, and another patrol car six to seven car lengths behind the first, both with emergency lights activated but no siren. (Id.)

By four-count Complaint, dated February 10, 2014, the Plaintiff-Appellant, Angela Borelli, Giordano's mother and the administrator of his estate, brought action against the Defendants-Appellees. (Pl.'s Compl., Pl.'s App. at A6-17.) Count One is directed toward Officers Renaldi and Jasmin and sounds in common law negligence and alleges that said officers were negligent in various ways in conducting the pursuit. Count Two is directed toward the officers' supervisor, Sergeant William King, and also sounds in common law negligence alleging King was negligent in several ways including that he failed to order the pursuit terminated. Counts Three and Four are directed toward the Town and are brought pursuant to Connecticut General Statutes §§ 52-557n and 7-465, respectively. The Defendants filed an Answer and Special Defenses to the Complaint, on May 6, 2014, claiming that the Plaintiff's claims are barred by common law and statutory governmental immunity, and that Giordano was comparatively negligent in subjecting himself to serious injury or death in entering the Ramirez vehicle under the circumstances. (Defs.' Answer

[1] The reasonable inference from the competent record evidence is that Trooper Ryan Pfeiffer was operating the second patrol car observed by Steven Landi.

and Special Defenses, Pl.'s App. at A21-27.) The Defendants also made apportionment claims against Giordano and Ramirez.

On July 15, 2016, the Defendants filed a Motion for Summary Judgment accompanied by a memorandum of law and exhibits based upon several grounds, including that the claims are barred by the doctrine of governmental immunity to which no exception applies. (Defs.' Mot. for Summ. J., July 15, 2016, Pl.'s App. at A32.) Thereafter, on September 23, 2016, the Plaintiff filed an objection to the defendants' motion accompanied by a memorandum of law and exhibits. (Pl.'s Obj. to Defs.' Mot. for Summ. J., Pl.'s App. at A186.) The Defendants filed a reply to Plaintiff's objection on September 29, 2016. (Defs.' Reply to Pl.'s Obj. to Mot. for Summ. J., Defs.' App. at A-1-11.)

Oral argument on the Defendants' Motion for Summary Judgment and Plaintiff's objection was heard, on January 30, 2017, by the Honorable Theodore R. Tyma. At argument, the trial court requested supplemental briefing on the impact local policies could have on the discretionary nature of the duty. Both parties filed supplemental briefs on February 22, 2017 and additional argument was heard by the court on October 3, 2017.

The court (*Tyma, J.*) issued a decision on September 26, 2017, granting the Defendants' Motion for Summary Judgment. With respect to the claim directed toward Sergeant King, the court held that there is no genuine issue of material fact that King owed no duty to Giordano as he was not made aware of the pursuit while it was going on.[2]

[2] The Plaintiff's indication that the trial court did not address this issue, (see Pl.'s Br. at 6 n. 20), is incorrect. The Plaintiff failed to assert any claim related to the trial court's finding that King owed no duty to her decedent in her statement of issues or to brief such a claim and, thus, she has waived any appeal concerning the granting of summary judgment as to King. Grimm v. Grimm, 276 Conn. 377, 393, 886 A.2d 391 (2005), cert. denied, 547 U.S. 1148, 126 S.Ct. 2296, 164 L.Ed.2d 815 (2006) ("Claims that are inadequately briefed

(Memo. of Dec. at 7 n. 1, Pl.'s App. at A288.) The court held with respect to the claims directed toward Renaldi and Jasmin[3] "'that the duty to drive safely in § 14-283 is discretionary', not only for the reasons stated in . . . other Superior Court decisions holding likewise but also based on statutory interpretation guided by longstanding appellate authority on the difference between ministerial and discretionary duties." (Memo. of Dec. at 10, Pl.'s App. at A291(quoting Parker v. Stadalink, Superior Court, judicial district of Waterbury, Docket No. UWYCV136020769-S (May 4, 2016, *Brazzel-Massaro, J.*)).

The court went on to hold that the Plaintiff failed to raise a genuine issue of material fact as to whether her decedent qualified for the "identifiable victim imminent harm" exception to governmental immunity. (Memo. of Dec. at 13-17, Pl.'s App. at A294-98.) The court specifically held that there were no allegations or evidence to support that Plaintiff's decedent was a member of a foreseeable class of victims,[4] (Memo. of Dec. at 13, Pl.s App. at A294), and no evidence that the Plaintiff's decedent was an identifiable person subject to imminent harm, (Memo. of Dec. at 16, Pl.s App. at A297). With regard to the issue of whether the Plaintiff's decedent was an identifiable individual for purposes of the exception, the court found that the Plaintiff offered no evidence to support the allegations in her Complaint that Renaldi and Jasmin "knew that Giordano was a passenger in the Ramirez

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generally are considered abandoned."). King is no longer a Defendant in this matter and as such he is not listed as a Defendant or referred to in this brief.

[3] The trial court assumed for the sake of argument that Officer Jasmin was engaged in the pursuit but observed that the record evidence based upon non-party witness Steven Landi's statement and Jasmin's affidavit submitted in support of summary judgment support that he was not. (See Memo. of Dec. at 4, 6, Pl.'s App. at A285, A287.)

[4] Plaintiff claimed that her decedent was a member of a foreseeable class of victims defined as "innocent passengers in the pursued vehicle" who are entitled to public safety.

vehicle." Rather, "[t]he only evidence . . . [was] that Giordano was sleeping in the backseat of Ramirez's vehicle during the pursuit." (Memo. of Dec. at 13-17, Pl.'s App. at A294-98.)

The Plaintiff now appeals from the court's judgment only with respect to the claims directed toward Renaldi and Jasmin and derivative claims directed toward the Town.

LEGAL ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT DEFENDANTS RENALDI AND JASMIN ARE IMMUNE FROM LIABILITY WITH REGARD TO THE PLAINTIFF'S CLAIMS OF NEGLIGENCE PURSUANT TO THE DOCTRINE OF GOVERNMENTAL IMMUNITY TO WHICH NO EXCEPTION APPLIES.

A. Standard of review.

> The standard of review of a trial court's decision granting summary judgment is well established. Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party.... The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law.... Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary.... On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court." (Internal quotation marks omitted.) *Cefaratti* v. *Aranow*, 321 Conn. 637, 645, 138 A.3d 837 (2016). Specifically, whether municipal immunity applies is a matter of law for the court to decide when there are no unresolved factual questions material to the issue. *Edgerton* v. *Clinton*, 311 Conn. 217, 227, 86 A.3d 437 (2014).

St. Pierre v. Plainfield, 326 Conn. 420, 426–27, 165 A.3d 148 (2017).

"While it is the defendant's burden to prove the defense of governmental immunity . . . it is the plaintiff's burden to prove an exception to that defense." Silano v. Bd. of Educ., 52 Conn.Supp. 42, 62 (2011).

B. The trial court correctly determined that Renaldi and Jasmin's conduct in pursuing the Ramirez vehicle was discretionary.

The trial court correctly determined that Officers Renaldi and Jasmin's alleged conduct in pursuing the Ramirez vehicle was discretionary based upon longstanding appellate authority on the difference between ministerial and discretionary duties in the context of the defense of governmental immunity and principles of statutory interpretation. Accordingly, the trial court's holding that the Defendants are entitled to governmental immunity should be affirmed by this Court.

1. Applicable legal principles

a. Governmental Immunity

Under the common law, a municipality was generally immune from liability for its tortious acts. Martel v. Metro. Dist. Comm'n, 275 Conn. 38, 47, 881 A.2d 194 (2005). However, such governmental immunity may be abrogated by statute; id.; and General Statutes § 52–557n(a)(1) provides in relevant part that "[e]xcept as otherwise provided by law, a political subdivision of the state shall be liable for damages to person or property caused by: (A) The negligent acts or omissions of such political subdivision or any employee, officer or agent thereof acting within the scope of his employment or official duties . . . ."

"[Section] 52–557n(a)(2)(B), however, explicitly shields a municipality from liability for damages to person or property caused by the negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." Haynes v. Middletown, 314 Conn. 303, 312, 101 A.3d 249 (2014) (internal quotation marks omitted). "The hallmark of a discretionary act is that it

requires the exercise of judgment . . . . In contrast, [m]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." Coe v. Bd. of Educ., 301 Conn. 112, 118, 19 A.3d 640 (2011). "If the acts or omissions complained of are not imposed in the form of a general legal duty, they must, in order to be characterized as ministerial, be required by [a] ... charter provision, ordinance, regulation, rule, policy, or any other directive ... that prescribe[s] the manner in which [they are to be performed]." Silberstein v. 54 Hillcrest Park Associates, LLC, 135 Conn. App. 262, 271, 41 A.3d 1147 (2012) (internal quotation marks omitted).

> Although the determination of whether official acts or omissions are ministerial or discretionary is normally a question of fact for the fact finder ... there are cases where it is apparent from the complaint ... [that] [t]he determination of whether an act or omission is discretionary in nature and, thus, whether governmental immunity may be successfully invoked pursuant to ... § 52–557n(a)(2)(B), turns on the character of the act or omission complained of in the complaint . . . . Accordingly, where it is apparent from the complaint that the defendants' allegedly negligent acts or omissions necessarily involved the exercise of judgment, and thus, necessarily were discretionary in nature, summary judgment is proper.

Thivierge v. Witham, 150 Conn. App. 769, 775–76, 93 A.3d 608 (2014) (internal quotation marks omitted).

> It is firmly established that the operation of a police department is a governmental function, and that acts or omissions in connection therewith ordinarily do not give rise to liability on the part of the municipality ... Police officers are protected by discretionary act immunity when they perform the typical functions of a police officer. The policy behind discretionary act immunity for police officers is based on the desire to encourage police officers to use their discretion in the performance of their typical duties. Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official

> functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury.

Texidor v. Thibedeau, 163 Conn. App. 847, 858–59, 137 A.3d 765, cert. denied, 321 Conn. 918, 136 A.3d 1276 (2016) (citations omitted; internal quotation marks omitted).

There is "considerable discretion inherent in law enforcement's response to an infinite array of situations implicating public safety on a daily basis." Coley v. Hartford, 312 Conn. 150, 165, 95 A.3d 480 (2014). "There is a difference between laws that impose general duties on officials and those that mandate a particular response to specific conditions." Brusby v. Metro. Dist., 160 Conn. App. 638, 656, 127 A.3d 257 (2015) (internal quotation marks omitted).

"[*A]ny decision requiring an evaluation of competing factors, variables, priorities, and the consequential selection of a course of action, necessarily involves the exercise of judgment, and therefore implicates discretion*. Ministerial acts, conversely, are ones which require a person perform in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or exercise of his or her own judgment on the propriety of the act being done." Grignano v. Milford, 106 Conn. App. 648, 654, 943 A.2d 507 (2008) (emphasis added).

b. Statutory Interpretation

When a duty is embodied in a statute, courts follow the usual rules of statutory interpretation to determine whether the duty is discretionary or ministerial. See, e.g., Mills v. The Sol., LLC, 138 Conn. App. 40, 49, 50 A.3d 381 (2012). Specifically,

> The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of

> whether the language does so apply.... When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, [the court] seek[s] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Mills v. The Sol., LLC, 138 Conn. App. 50.

"A statute is enacted as a whole and must be read as a whole rather than as separate parts or sections." Wiseman v. Armstrong, 269 Conn. 802, 810, 850 A.2d 114 (2004). "The mere fact that a statute uses the word 'shall' in prescribing the function of a government entity or officer should not be assumed to render the function necessarily obligatory in the sense of removing the discretionary nature of the function, and it is therefore not sufficient that some statute contains mandatory language nor that the public entity or officer was under an obligation to perform a function that itself involves the exercise of discretion." Mills v. The Sol., LLC, 138 Conn. App. 51 (quoting 57 Am.Jur.2d 91, Municipal, County, School, and State Tort Liability § 75 (2012)).

2. General Statutes § 14-283 does not impose a ministerial duty on the Defendant officers

The first issue for this Court on appeal is whether General Statutes § 14-283[5] imposes a ministerial duty on Defendant Officers Renaldi and Jasmin in the context of their

[5] The relevant portions of the statute are set forth at pages nine and ten of the Plaintiff's Brief.

pursuit of the Ramirez vehicle and it is an issue of first impression. The trial court, in deciding the Defendants' Motion for Summary Judgment, determined, upon examination of the Plaintiff's Complaint, that the crux of her allegations against said Defendants is that they were negligent in their pursuit of the Ramirez vehicle.[6] (Memo. of Dec. at 9, Pl.'s App. at A290.) Interpretation of pleadings is a question of law for the court. Boone v. William W. Backus Hospital, 272 Conn. 551, 559, 864 A.2d 1 (2005).

With the above legal principles in mind, the trial court correctly determined that an officer's conduct in conducting a pursuit is discretionary. The court noted that the Plaintiff's claim that Renaldi and Jasmin's duties in pursuing the Ramirez vehicle were ministerial was grounded in General Statutes § 14-283 and § 5.11.12 (B) of the department's pursuit policy. (Id.) With regard to General Statutes § 14-283, the Plaintiff claimed that the officers had a ministerial duty "to drive with regard to the safety of all persons." (Id.)

The trial court, noting a split of authority on the issue, adopted the reasoning and decision of Parker v. Stadalink, supra. (Memo. of Dec. at 9-10, Pl.'s App. at A290-91; Defs.' App. at A-67-74.) The trial court, like that in Parker and other recent decisions[7] considering the issue, found support for the conclusion that § 14-283 does not impose a

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[6] Plaintiff states that "the question before this Court is limited to determining whether the legislature intended to create a ministerial obligation on officers to first account for the seriousness of the offense and the dangerousness of the pursuit *before engaging in it* . . ." (Pl.'s Br. at 7.) Plaintiff's Complaint, however, does not allege that the officers were negligent in undertaking such an analysis nor did she raise such an argument with the trial court.

[7] See e.g., Kajic v. Marquez, Superior Court, judicial district of Hartford at Hartford, Docket No. HHDCV166065320S (Aug. 16, 2017, *Noble, J.)* (Defs.' App. at A-45-66)*;* Paternoster v. Paszkowski, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. FBTCV146042098 (Sept. 1, 2015, *Kamp, J.*) (Defs.' App. at A-75-83);and Dudley v. Hartford, Superior Court, judicial district of Hartford, Docket No. CV095033767S (July 24, 2013, *Scholl, J.*) (Defs.' App. at A-84-92.).

ministerial duty in the decisions of Coley v. Hartford, 312 Conn. App. 315, 59 A.3d 811 (2013), aff'd, 312 Conn. 150, 95 A.3d 480 (2014) and Faulkner v. Daddona, 142 Conn. App. 113, 62 A.3d 993 (2013). (Memo. of Dec. at 10-11, Pl.'s App. at A291-92.)

In Coley, the plaintiff brought a wrongful death action after her decedent was shot and killed after the police responded to a report of domestic violence at an apartment the decedent shared with her daughter. Coley, 312 Conn. 152. The plaintiff alleged that the police were negligent in failing to remain at the scene for a reasonable amount of time in violation of, inter alia, the Hartford Police Department Policy and Procedure entitled "Police Response to Cases of Family Violence". Id. at 152-53. The trial court granted summary judgment in favor of the defendant, concluding, inter alia, that the police officers' actions were discretionary, not ministerial. Id. at 156. The Appellate Court affirmed, id. at 157-58, and on appeal to the Supreme Court, the plaintiff claimed similar to the Plaintiff in this matter that language in the police response procedures, specifically the phrase "shall remain," rendered the duty to remain at the scene mandatory, id. at 162-63. The policy at issue provided that "[i]n the event that an arrest is not made … officers shall remain at the scene for a reasonable time until, in the reasonable judgment of the officer, the likelihood of further imminent violence has been eliminated." Coley, 312 Conn. 165.

In concluding that the defendants' allegedly negligent acts were discretionary, the court observed, [i]n actuality . . . the gravamen of the plaintiff's allegations is that the defendant failed to remain at the scene for a *reasonable time* until, in the *reasonable judgment of the police officer* the likelihood of further imminent violence had been eliminated." Id. at 165-66 (emphasis in original). Thus, "in no uncertain terms, the policy

requires police officers to exercise their judgment in evaluating the likelihood of imminent violence." Id.

Similarly, in Faulkner, supra, the court held, inter alia, that a police department's general orders did not impose a ministerial duty on the defendant officer where no provision prescribed the particular manner in which an officer must always secure an accident scene. Id., 142 Conn. 123. The court observed that there were no such provisions "because all accident scenes are different from one another, and in fact are so different as to require different measures be taken to secure them. Consistent with this reality, even the general orders which the plaintiff claims to have been violated are replete with directives to officers to take 'appropriate' action, as 'necessary' or 'reasonable' in the attending circumstances, rather than prescribing a single, unalterable method of securing the scene." Id. The court held that such directives, therefore, "described duties whose performance requires the exercise of judgment and discretion, for which the officer was entitled to governmental immunity." Id.

The trial court, like those in Kajic, supra; Parker, supra; Paternoster, supra; and Dudley, supra, determined that the proper course is to examine the statutory and regulatory violation alleged in light of Coley and Faulkner. The trial court, in performing this examination, correctly concluded:

> General Statutes § 14-283 and § 5.11.12 (B) of the town's pursuit policy both require a police officer operating an emergency vehicle to exercise due care for the safety of the general public. This language does not direct an officer to perform that act in a ministerial fashion, but affirms the officer's duty to exercise his judgment and discretion in a reasonable and rational manner under the circumstances with which he is confronted.

(Memo. of Dec. at 11, Pl.'s App. at A292.) In other words, the phrase "due care" or "due regard" necessarily implicates the exercise of discretion—it is synonymous with reasonable care.[8] "Reasonable care is care proportionate to the dangers existing in light of the surrounding circumstances." Galligan v. Blais, 170 Conn. 73, 77, 364 A.2d 164 (1976). "[T]he amount of care required to constitute reasonable care varies with the surrounding circumstances and must be proportioned to the dangers reasonably anticipated." Hunt v. Clifford, 152 Conn. 540, 209 A.2d 182 (1965).

Superior Court decisions finding, on the other hand, that General Statutes § 14-283 creates a ministerial duty in the context of a police pursuit are older cases decided prior to Coley and Faulkner and/or have misapplied the above legal principles concerning governmental immunity and statutory construction. As noted by the Parker court, "[t]he decisions holding them to be ministerial do so mainly because § 14-283(d) expressly states that the statutory provisions 'shall not relieve' operators of the duty to drive with due care." Parker, supra, at * 4 (and referenced cases) (Defs.' App. at A-67-74). As set forth above, however, the mere fact that a statute uses the term "shall" is not determinative of the issue of whether the duty embodied therein is discretionary or ministerial. The determinative issue is whether the duty can be "performed in a prescribed manner without the exercise of judgment or discretion." See Parker, at * 6 (quoting Violano v. Fernandez, 280 Conn. 310, 318, 907 A.2d 1188 (2006)) (Defs.' App. at A-67-74). Very simply, the duty to drive with "due regard for the safety of all persons and property," in the context of a police pursuit, may not be implemented without the exercise of discretion. This is because what

[8] See Heisinger v. Cleary, 323 Conn. 765, 778, 150 A.3d 1136 (2016) ("Due care, reasonable care, and ordinary care are often used as convertible terms.")

constitutes “due regard” is a variable concept dependent on the nature of the offense, weather, traffic, time of day, and location.

Accordingly, this Court should adopt the trial court and Parker court’s analysis to find that § 14-283 does not provide for a ministerial duty in the context of a police pursuit, as they apply the correct test pursuant to established case law for distinguishing between ministerial and discretionary duties and that related to statutory interpretation.

The Defendants note that one of the Superior Court decisions relied upon by the Plaintiff for the proposition that General Statutes § 14-283 imposes a ministerial duty upon police officers in a motor vehicle pursuit, Boone v. Mills, Superior Court, judicial district of Litchfield at Litchfield, Docket No. 0051318 (Oct. 17, 1990, *McDonald, J.*), (Pl.’s Br. at 10), does not in fact have such a broad holding. Rather, the court held that the decision to engage in a pursuit is discretionary and governmental immunity may be a special defense to a claim that said act was the proximate cause of plaintiff’s injuries. Boone, at * 2. The court, however, held that once a pursuit begins, an officer’s failure to use an audible warning signal as mandated by General Statutes § 14-283 may be conduct to which immunity does not apply. Id. This case does not concern failure to use an audible warning signal and Boone, therefore, is not instructive.

The other case specifically referenced by the plaintiff, Docchio v. Bender, Superior Court, Docket No. CV980146014S (Aug. 15, 2002, *Holzberg, J.*), (Pl.’s Br. at 10), improperly relies upon the statutory language of § 14-283(d) requiring an officer to drive with due regard for the safety of person and property and language in § 14-283(b)(3) allowing an officer to exceed speed limits as long as he does not endanger life or property by doing so, without performing any analysis as to whether an officer could perform either

of these duties in a prescribed manner without the exercise of judgment and discretion. Docchio, at * 4.

Plaintiff's argument that the two lines of Superior Court cases considering the issue are not in conflict because, applying the principals of Strycharz v. Cady, 323 Conn. 548, 148 A.3d 1011 (2016), "it is reasonable to construe § 14-283 as imposing a ministerial duty to actually consider the health and safety of those involved in light of the seriousness of the alleged offense [sic] conduct at the start of a pursuit" while the "'how' of the performance of that duty is left up to the discretion of the officer," is without merit. (Pl.'s Br. at 13.) Strycharz stands for no such proposition.

In Strycharz, the court held that the defendant school administrators had a ministerial duty to prepare and to distribute a bus duty roster to school staff members but the duty to make sure that school staff members were in fact present at their assigned posts was discretionary. Id. at 564. The court's decision that the defendants had a ministerial duty to prepare and distribute the roster was based upon deposition testimony that the school principal had a duty to assign school staff members to different posts, including the bus port, and that he lacked discretion not to do so. Id. at 566. The court went on to observe that the "general responsibility to manage and supervise school employees" is discretionary, not ministerial, and, thus, the defendants' duty to ensure that school staff members adequately discharged their assignments was discretionary as it was encompassed within this general responsibility. Id. In so holding the court observed,

> Furthermore, it is axiomatic that public school administrators perform a difficult . . . and . . . vitally important job in our society. . . . After all, they are in charge of a system that enables our nation's youth to become responsible participants in a self-governing society. . . . Because of the vital importance of their

> function to society, school administrators undoubtedly must be accorded substantial discretion to oversee properly their myriad responsibilities.

Strycharz, 323 Conn. 569.

Police officers, likewise, perform a vitally important job in our society—enforcing the law and protecting town residents and property—and, like the school administrators in Strycharz, should be accorded substantial discretion to oversee their myriad responsibilities in the absence of anything in the record that can be construed as establishing a ministerial duty. See id. at 567-68. There is nothing in the record before this Court that may be construed as establishing a ministerial duty. To the contrary, the applicable statutory framework and Seymour Police Department's pursuit policy, (Seymour Police Department Regulations, §§ 5.11.5, 5.11.11, § 5.11.12, Defs.' Exhibit J, Pl.'s App. at A180-85), support that the conduct the plaintiff complains of is discretionary.

Plaintiff's argument that operation of a motor vehicle on a public roadway is not unique to government and, as such, for public policy reasons, General Statutes § 14-283 should be found to embody a ministerial duty that officers "act reasonably on the road", (Pl.s' Br. 14-15), also misses the mark. To the extent that the plaintiff is advocating that an operational versus policy determination analysis be applied to distinguish between acts that are ministerial versus discretionary, same has been rejected by our Supreme Court in Violano v. Fernandez, supra, 280 Conn. 326-28. Further, plaintiff overlooks the policy underlying governmental immunity that the interest in having police officers free to exercise their judgment and discretion in the performance of their official duties outweighs the benefits to be had from imposing liability. There is no question that law enforcement officers, like all other drivers, have a duty to exercise due care in driving. In circumstances

such as a police pursuit, however, an officer is engaged in a function specific to law enforcement which requires an evaluation of competing factors, variables, priorities, and a resultant selection of a course of action. Under our case law such a function is discretionary and the officer is entitled to governmental immunity in its performance.

C. The trial court correctly determined that the Plaintiff's decedent did not belong to a class of identifiable victims and was not an identifiable individual subject to imminent harm.

1. Applicable legal principles

> [T]he identifiable person-imminent harm exception has three requirements: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. *Haynes v. Middletown,* supra, 314 Conn. at 312–13, 101 A.3d 249. "An allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm. Likewise, the alleged imminent harm must be imminent in terms of its impact on a specific identifiable person.... *The exception is applicable only in the clearest cases*.... *Although the identifiable person contemplated by the exception need not be a specific individual, the plaintiff must fall within a narrowly defined identified [class] of foreseeable victims*." (Citations omitted; internal quotation marks omitted.) *Thivierge v. Witham,* 150 Conn.App. 769, 779, 93 A.3d 608 (2014). "[U]nder our case law ... we have interpreted the identifiable person element narrowly as it pertains to an injured party's *compulsion* to be in the place at issue...." *Grady v. Somers,* 294 Conn. 324, 356, 984 A.2d 684 (2009).

Texidor v. Thibedeau, supra, 163 Conn. App. 861–62 (emphasis added).

In Grady v. Somers, supra, our Supreme Court emphasized,

> The only identifiable class of foreseeable victims that we have recognized for these purposes is that of schoolchildren attending public school during school hours because: they were intended to be the beneficiaries of particular duties of care imposed by law on school officials; they were legally required to attend school rather than being there voluntarily; their parents were thus statutorily required to relinquish their custody to those

> officials during those hours and, as a matter of policy, they traditionally require special consideration in the fact of dangerous conditions.

Grady, 294 Conn. 352.

"The rule has been narrowly applied outside of the public school context . . . and the few cases in which a specific plaintiff has been held to be an identifiable victim are largely limited to their facts." Texidor v. Thibedeau, supra, 163 Conn. App. 862.

Our Supreme Court stated in St. Pierre v. Plainfield, supra, 326 Conn. 420, "[o]ur decisions underscore . . . that whether the plaintiff was compelled to be at the location where the injury occurred remains a paramount consideration in determining whether the plaintiff was an identifiable person or a member of a foreseeable class of victims." Id. at 436.

In St. Pierre, the plaintiff filed a negligence action against the defendants, Town of Plainfield and Eastern Connecticut Rehabilitation Center, Inc. ("Eastern"), to recover for injuries sustained in a fall on wet steps after participating in an aqua therapy session. Id. at 424. This session was conducted by Eastern in a pool owned by the defendant Town. Id. The plaintiff appealed the trial court's granting of summary judgment in favor of the Town on the basis of governmental immunity claiming on appeal, inter alia, that he qualified for the identifiable person imminent harm exception to governmental immunity. Id. at 422-23. The plaintiff specifically contended that he was an identifiable individual to the on duty lifeguard employed by the defendant. Id. at 435. After a thorough review of our case law considering applicability of the exception, the court held,

> In the present case, the plaintiff was in no way compelled to attend the aqua therapy sessions provided by Eastern. Instead, he voluntarily decided to use Eastern's services. Under

> established case law, this choice precludes us from holding that the plaintiff was an identifiable person or a member of an identifiable class of persons. As the identifiable person, imminent harm exception requires conjunctive proof of both, our determination that the plaintiff does not qualify as an identifiable person ends our analysis, and we need not consider whether an imminent harm existed on these facts.

St. Pierre, 326 Conn. 438.

2. The Plaintiff's decedent's voluntary choice to ride as a passenger in the Ramirez vehicle disqualifies him as either an identifiable person or a member of an identifiable class of persons

Following St. Pierre, supra, the Plaintiff's decedent's voluntary decision to ride as a passenger in the Ramirez vehicle precludes a finding that he was an identifiable person or a member of an identifiable class of persons. As such, this Court should affirm the trial court's holding that there exists no genuine issue of material fact that the Plaintiff's decedent does not qualify for the exception.

The trial court specifically held,

> There are no allegations or evidence in the present action that supports the plaintiff's claim that the decedent was a member of a foreseeable class of victims. Specifically, there is no allegation or evidence that the decedent was statutorily compelled or mandated to get into Ramirez's vehicle, which evidence . . . is required to satisfy membership in a narrowly defined class of victims. The reasonable inference from the undisputed facts is that the decedent voluntarily entered Ramirez's vehicle to ultimately go to Major's house.

(Memo. of Dec. at 13-14, Pl.'s App. at A294-95.) The trial court's conclusion is a correct analysis of the law as applied to the competent record evidence in this case. The Plaintiff does not dispute the trial court's conclusion that her decedent was not compelled to be at the tort location, instead completely overlooking this aspect of the trial court's analysis and corresponding binding precedent of St. Pierre, supra. The fact that the decedent was in no

way compelled to be in the Ramirez vehicle is dispositive of the issue of whether he qualifies for application of the "identifiable person imminent harm" exception and this Court need not conduct any further analysis.

Accordingly, the Plaintiff's argument that evidence in the record supports that Officer Renaldi was aware passengers were in the vehicle, that the trial court erred when it concluded that specific information of the presence of a passenger was required, and that the plaintiff's decedent was identifiable because § 14-283(d) made him so are unavailing. (Pl.'s Br. at 17-20.) The Defendants, nevertheless, address each argument in turn.

The Plaintiff specifically argues that the court should have found that because the occupants of the Ramirez vehicle were wearing pink striped zebra hats and the vehicle was a convertible with its top down, Renaldi must have seen them and have been aware of their presence. This argument is without merit as the record evidence does not support that the Plaintiff's decedent was wearing such a hat. To the contrary, Dion Major testified that he had one on and Eric Ramirez "might have had one on." (Dion Major Depo. Trans., July 14, 2015, T78:17-21, Pl.'s App. at A220.) There is no record evidence to support that the decedent was wearing such a hat and even assuming arguendo that he was, given that it was dark out, Ramirez turned off his vehicle's lights and the decedent was sleeping in the back seat, it would not support that Renaldi was aware of his presence in the vehicle. In fact, independent witness Steven Landi, who was traveling North on Route 67, indicates that he passed by the Ramirez vehicle as it traveled South but, because it was dark out, the vehicle had its headlights off, and the vehicle was speeding, he could not tell what kind of vehicle it was. (Steven Landi Statement, dated March 29, 2011, Pl.'s App. at A226-27.)

The record cited to by the plaintiff fails to even support that the Ramirez vehicle had its top down. (See Pl.'s Br. at 18, citing Pl.'s App. at A219-21.)

With regard to the Plaintiff's argument that the trial court's decision is out of line with "current Connecticut law," relying on the 1979 case of Sestito v. Groton, 178 Conn. 520, 423 A.2d 165 (1979), this argument is also without merit. Sestito involved a public disturbance outside of a restaurant which the defendant police officer observed but did not attempt to stop until the plaintiff's decedent was shot and is, therefore, readily distinguishable from the instant matter.[9] Sestito, supra, 178 Conn. 520. In Sestito, unlike the instant matter, the defendant officer was specifically aware of the plaintiff's decedent's presence at the tort location.

Further, "[o]ur Supreme Court . . . has explained that Sestito was decided before the current three-pronged identifiable person-imminent harm exception was adopted and its holding is limited to its facts." Thivierge v. Witham, supra, 150 Conn. App. 780 n. 8. (citing Edgerton v. Clinton, 311 Conn. 217, 240, 86 A.3d 437 (2014)).

In the alternative, the Plaintiff argues that "this Court may conclude that the plaintiff was identifiable because General Statutes § 14-283 (d) made him so." (Pl.'s Br. at 20.) Plaintiff cites to no authority for this proposition or analysis other than the statute. This appears to just be a reformulation of the argument that the Plaintiff comes within a cognizable class of foreseeable victims—passengers in the pursued vehicle—advanced by

[9] In Sestito, the court held that the plaintiff's decedent was a sufficiently identified person to the defendant police officer since the officer observed the plaintiff's decedent in a group of seven men drinking, arguing and fighting in a parking lot. Id. at 522-23. The officer drove by the men several times as they fought and, although he believed one of the men was armed and was a robbery suspect, he did not intervene or attempt to stop the altercation until after gunshots were fired. Id. at 523.

the Plaintiff to the trial court, (Obj. to Mot. Sum. J., Pl.'s App. at A202-03), which argument clearly fails upon application of controlling law.

As the Plaintiff did not allege in her Complaint or raise a genuine issue of material fact as to whether her decedent came within a class of foreseeable victims and did not raise a genuine issue of material fact as to whether he was an identifiable individual subject to imminent harm, the trial court's decision should be affirmed by this Court.

3. The trial court's decision that the Plaintiff's decedent does not qualify for application of the identifiable person imminent harm exception to governmental immunity is sustainable on alternative grounds

The trial court's decision that the Plaintiff's decedent does not qualify for application of the "identifiable person imminent harm" exception to governmental immunity is sustainable on the alternative grounds that the Plaintiff failed to raise a genuine issue of material fact as to whether the harm was imminent and/or as to whether an imminent harm was apparent to any individual Defendant.

a. Plaintiff's decedent was not subject to imminent harm

The proper standard for determining whether a plaintiff is placed in imminent harm as set forth by our Supreme Court in Haynes v. Middletown, supra, 314 Conn. 303, is "whether it was apparent to the municipal defendant that the dangerous condition was so likely to cause harm that the defendant had a clear and unequivocal duty to act immediately to prevent the harm." Id. at 322-23.

In Williams v. Hous. Auth., 159 Conn. App. 679, 124 A.3d 537, cert. granted on other grounds, 319 Conn. 947, 125 A.3d 528 (2015), the court construed Haynes as setting forth the following four part test with respect to imminent harm:

> First, the dangerous condition alleged by the plaintiff must be 'apparent to the municipal defendant.' We interpret this to mean that the dangerous condition must not be latent or otherwise undiscoverable by a reasonably objective person in the position and with the knowledge of the defendant. Second the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff. A dangerous condition that is unrelated to the cause of harm is insufficient to satisfy the *Haynes* test. Third, the likelihood of the harm must be sufficient to place upon the municipal defendant a 'clear and unequivocal duty' . . . to alleviate the dangerous condition. The court in *Haynes* tied the duty to prevent the harm to the likelihood that the dangerous condition would cause harm. . . . *Thus, we consider 'a clear and unequivocal duty' . . . to be one that arises when the probability that harm will occur from the dangerous condition is high enough to necessitate that the defendant act to alleviate the defect. Finally, the probability that harm will occur must be so high as to require the defendant to act immediately to prevent the harm*. . . .

Williams, 159 Conn. App. 705-06 (emphasis added). Even if the Plaintiff could meet the other parts of the test which the Defendants' deny, she fails to meet the third and fourth requirements. That is, the Plaintiff failed to raise a genuine issue of material fact as to the probability of injury to her decedent under the circumstances. This Court has recently held that "foreseeability of injury . . . does not translate to imminent harm without also showing that the probability that an injury will occur from the dangerous condition . . . ." Washburne v. Madison, 175 Conn. App. 613, 631, 167 A.3d 1029 (2017). Accordingly, the trial court's finding that the plaintiff's decedent does not qualify for the "identifiable person imminent harm" exception to governmental immunity should be affirmed on this alternative basis.

b. It was not apparent to any individual Defendant that the Plaintiff's decedent was at risk of imminent harm

In Edgerton v. Clinton, 311 Conn. 217, 86 A.3d 437 (2014), our Supreme Court set forth the parameters for establishing the apparentness requirement as follows:

> Imposing liability when a municipal officer deviated from an ordinary negligence standard of care would render a municipality's liability under § 52–557n no different from what it would be under ordinary negligence. This would run counter to the purpose of governmental immunity, which is to protect a municipality from liability arising from a municipal officer's negligent, discretionary acts unless the officer's duty to act is clear and unequivocal . . . . This policy is especially relevant in cases such as the present one, in which the government officer is called on to make split second, discretionary decisions on the basis of limited information . . . . Therefore, unlike under an ordinary negligence standard of care, under the apparentness requirement of the identifiable person-imminent harm exception, there is no inquiry into the ideal course of action for the government officer under the circumstances. Rather, the apparentness requirement contemplates an examination of the circumstances of which the government officer could be aware, thereby ensuring that liability is not imposed solely on the basis of hindsight, and calls for a determination of whether those circumstances would have revealed a likelihood of imminent harm to an identifiable person.

Edgerton, 311 Conn. at 228 n. 10. Against this backdrop, the court went on to hold that:

> In order to meet the apparentness requirement, the plaintiff must show that the circumstances would have made the government agent aware that his or her acts or omissions would likely have subjected the victim to imminent harm . . . . This is an objective test pursuant to which we consider the information available to the government agent at the time of her discretionary act or omission . . . . We do not consider what the government agent could have discovered after engaging in additional inquiry.

Edgerton, at 231-32. Stated differently, the "inquiry is not whether it is apparent to the government official that an action is useful, optimal, or even adequate. Rather, we determine whether it would have been apparent to the government official that her actions likely would have subjected an identifiable person to imminent harm." Id. at 311 Conn. 238-39.

Based upon the record evidence, it would not be apparent to either of the Defendant officers that their actions would subject the Plaintiff's decedent to harm. Specifically, it would not have been apparent to either of the Defendants that the attempt to stop the Ramirez vehicle would cause Eric Ramirez to attempt to flee or that when the pursuit was stopped that he would continue to drive in a dangerous and reckless manner. The trial court's finding that the Plaintiff's decedent does not qualify for the "identifiable person imminent harm" exception is sustainable on this alternative basis.

II. THE TRIAL COURT'S GRANTING OF SUMMARY JUDGMENT IN THE DEFENDANTS' FAVOR IS SUSTAINABLE ON ALTERNATIVE GROUNDS.[10]

A. Standard of review.

The standard of review applicable to the granting of a motion for summary judgment is set forth above at Section I, A.

B. There exists no genuine issue of material fact that the acts or omissions of the Defendants were not the proximate cause of the Plaintiff's decedent's injuries and death.

The trial court's granting of summary judgment in the Defendants' favor is sustainable on the alternative ground that there exists no genuine issue of material fact that the acts or omissions of the Defendant officers were not the cause in fact and/or proximate cause of the Plaintiff's decedent's injuries and death.

> "[E]ssential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." (Internal quotation marks omitted.) *Jagger v. Mohawk*

[10] The Plaintiff suggests that alternative grounds for affirmance of the trial court's decision are not properly before this Court. (Pl.'s Br. at 7.) The Defendants, however, properly raised the alternative grounds for relief discussed in Section II, as well as those set forth above in Section I, C, 3, by timely filing a preliminary statement of issues with this Court, on November 3, 2017. Thus, alternative grounds for affirmance of the trial court's decision, including lack of legal causation, are properly before this Court.

> *Mountain Ski Area, Inc.,* 269 Conn. 672, 687, n. 13, 849 A.2d 813 (2004). "To prevail on a negligence claim, a plaintiff must establish that the defendant's conduct legally caused the injuries.... The first component of legal cause is causation in fact. Causation in fact is the purest legal application of ... legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct.... The second component of legal cause is proximate cause.... [T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries.... Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendants' conduct].... The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection.... This causal connection must be based upon more than conjecture and surmise." (Citations omitted; internal quotation marks omitted.) *Paige v. St. Andrew's Roman Catholic Church Corp.,* 250 Conn. 14, 24–26, 734 A.2d 85 (1999). "An actual cause that is a substantial factor in the resulting harm is a proximate cause of that harm.... The finding of actual cause is thus a requisite for any finding of proximate cause." (Citations omitted; internal quotation marks omitted.) *Boehm v. Kish,* 201 Conn. 385, 391–92, 517 A.2d 624 (1986).

Winn v. Posades, 281 Conn. 50, 56–57, 913 A.2d 407, 411 (2007).

In Winn, the plaintiff administratrix brought a wrongful death action against the defendant police officer and town after her son was killed in a collision with the officer at an intersection. Id. at 52. The trial court granted the defendants' motion for judgment of dismissal made at the close of the plaintiff's case, at trial, on the basis that no reasonable juror could find that the defendant officer's conduct was a proximate cause of the decedent's injuries and death. Id. The Appellate Court affirmed. Id. Our Supreme Court held that the Appellate Court properly concluded that the plaintiff had presented insufficient evidence of actual cause, or cause in fact, of the collision. Winn, 281 Conn. 60. The Court observed that "[a]lthough the plaintiff's evidence showed that [the officer] had been

negligent or reckless in operating his police cruiser through the intersection at a highly excessive rate of speed, there was no evidence that his speed actually caused the collision. Winn, 281 Conn. 60. The Court further noted that there were a number of factual possibilities that could explain how the accident occurred (i.e., the decedent may have run a red light and/or the traffic light may have malfunctioned). Id. Also, the plaintiff conceded that her decedent had consumed alcohol and smoked marijuana prior to operating his vehicle on the evening of the accident. Id. The Winn court found that this admission further supported that factors other than the defendant officer's speed, including the decedent's own impairment, might have caused the accident. Id.

Applying the above law related to legal cause, there exists no genuine issue of fact that the Defendant officers were not the cause in fact or proximate cause of the Plaintiff's decedent's injuries and death.

With regard to cause in fact, Renaldi terminated the pursuit well before Eric Ramirez crashed his vehicle. The crash occurred on Old State Road two tenths of a mile from its intersection with Route 67 and Renaldi had "backed off" from the vehicle prior to its turning onto Old State Road. As such, there exists no genuine issue of fact that the pursuit was not the cause in fact of collision and the plaintiff's decedent's death.

With regard to proximate cause, based upon the record evidence, the Plaintiff cannot meet her burden of establishing an unbroken sequence of events that ties her decedent's death to the Defendants' conduct. Although not binding on this Court, Dudley v. City of Hartford, supra, (Defs.' App. at A-84-92), is instructive. In Dudley, the trial court applied the above legal principles and reached the conclusion that the defendant officer's conduct in pursuing a fleeing suspect was not the cause of an occupant of the vehicle's

death, where the officer terminated pursuit but continued to follow the vehicle. Dudley, supra, at * 9. In so holding, the court observed the case facts were that, although no longer being pursued by the police with lights and sirens on, the driver of the van continued to speed away and drive in such a reckless manner as to cause the crash and [the plaintiff's decedent's death]." Id. The court concluded, "[i]t was the driver's failure to stop when he was first approached by the police and his attempt to evade police capture which was the proximate cause of the [decedent's] death." Id. So to, here, Eric Ramirez's failure to stop when he was first approached by Renaldi and his attempt to evade Renaldi was the proximate cause of the decedent's death rather than any conduct of the Defendant officers.

Accordingly, the trial court's judgment in favor of the Defendants is sustainable on the alternative basis that there exists no genuine issue of material fact that neither of the Defendants officers' conduct was the cause in fact and/or proximate cause of the subject motor vehicle accident.

C. There exists no genuine issue of material fact that Officer Jasmine owed no duty to the Plaintiff's decedent.

The trial court's granting of summary judgment in favor of Officer Michael Jasmin as to the negligence claims directed toward him in Count One of the Plaintiff's Complaint is sustainable on the alternative ground that there exists no genuine issue of material fact that he owed no duty to the Plaintiff's decedent.

The applicable law is fully set forth in the defendants' memorandum of law in support of summary judgment at Section I, B, (Pl.'s App. at A46-48). At no time on March 9, 2012 was Officer Jasmin engaged in a pursuit of the Ramirez vehicle, nor did he observe any police vehicle in pursuit of it. (Jasmin Aff. ¶ 6, Pl.s App. at A168.) At no time did Jasmin

follow the Ramirez vehicle with lights and sirens activated at a high rate of speed. (Jasmin Aff. ¶ 6, Pl.s App. at A168.) In fact, Jasmin never observed the Ramirez vehicle or Officer Renaldi's cruiser, having first laid eyes on the Ramirez vehicle at the scene of the accident. (Jasmin Aff. ¶ 7, Pl.'s App. at A169.) Jasmin was on Mountain Road, approximately a quarter mile before Route 67, when Officer Renaldi relayed that he was attempting to catch up with the Ramirez vehicle on Route 67 heading into Oxford. (Jasmin Aff. ¶ 5 and attached Exhibit 1, Pl.'s App. at A169, A170.) Jasmin then turned left from Mountain Road onto Route 67. (Jasmin Aff. ¶ 5 and attached Exhibit 1, Pl.'s App. at A169, A170; Steven Landi Written Statement, A226-28.) Jasmin was responding to assist Officer Renaldi when Renaldi relayed that he was on Old State Road. (Jasmin Aff. ¶ 5 and attached Exhibit 1, Pl.'s App. at A169, A170.) Based upon the foregoing record, there exists no genuine issue of material fact that Jasmin owed no duty to the Plaintiff's decedent and the trial court's decision as to the claims directed toward Jasmin is sustainable on this alternative ground.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, the Defendants-Appellees respectfully request that the trial court's (*Tyma, J.'s*) decision granting their Motion for Summary Judgment be affirmed.

DEFENDANTS/APPELLEES,
OFFICER ANTHONY RENALDI, OFFICER MICHAEL JASMIN, AND TOWN OF SEYMOUR

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CERTIFICATION

In accordance with Practice Book § 67-2(g), the undersigned hereby certifies that this Brief was electronically submitted to the Appellate Court of the State of Connecticut and has been electronically delivered to the last known e-mail address of all counsel of record on this 25th day of September, 2018. It is further certified that this Brief does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

The undersigned also hereby certifies that this Brief complies with all of the provisions of Connecticut Rules of Appellate Procedure § 67-2, § 67-3 and § 62-7. It is further certified that on this 25th day of September, 2018, the original and 10 copies of this Brief, which are true and accurate copies of the electronically submitted Brief, were filed with the Appellate Court of the State of Connecticut and one copy was mailed, postage prepaid, to the following pro se parties, counsel of record and trial court judge:

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